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23 October 1946

## MEMORANDUM

TO: Mr. Lawrence Houston  
 Office of General Counsel

FROM: Assistant Chief of Services

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1. Section 3709 as amended, Revised Statutes, provides that except as otherwise provided by law, all purchases and contracts for supplies or services, except for personal services, shall be made by advertising a sufficient time previously for proposals reflecting the same, when the public exigencies do not require the immediate delivery of the articles or performance of the services.

2. As the Strategic Services Unit, War Department, contracting and purchasing were based primarily on the authority contained in the Act of December 18, 1941 (Public Law No. 354, 77th Congress) referred to as the First War Powers Act, 1941, and Executive Order No. 9001, December 27, 1941. It is the understanding of the offices hereunder that (a) the establishment of CIG, and the maintenance of its operation from the appropriation of Government departments possessing the aforementioned authority, do not vest said authority in CIG, and (b) this conclusion is based on the theory that the negotiation power attaches to the particular Department or Agency specified in the Executive Order and not to the funds appropriated therefor.

3. The absence of a negotiation power in the statutory sense of the First War Powers Act, and the drawing of funds from other sources, have caused certain problems to arise, some of which can be solved if favorable consideration is given the current request for negotiation power, but some of which will remain irrespective of any grant of power.

4. The activation of the CIG has resulted in many and pressing demands from the standpoint of procurement. It is not felt that the procurements concerned can always be characterized technically as "public exigencies", and adequately and satisfactorily explained on the voucher to the General Accounting Office. Nevertheless, failure to effect the procurements concerned will embarrass and impede administratively

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certain activities of the CIG. With respect to the foregoing, therefore, the following questions are asked,

- (a) May the Contracting Officers procure without regard to 3709, Revised Statutes, on condition that said procurement is chargeable against a segment of the Atomic Service Appropriation?
- (b) What construction, interpretation, or application should be given to the phrase appearing in the above mentioned appropriation, "when necessary to carry out its purpose" with respect to procurement for administrative needs?

5. The procurement of special items is authorized in the Atomic Service Appropriation and presents a special problem, e.g., with or without the negotiation power the purchase of passenger automobiles on vouchered funds appears to be available only by charging the aforementioned appropriation. Charging said appropriation raises the question referred to in 4 (b) supra; or stated in another manner, would charging said appropriation bring the procurement under the phrase "except as otherwise provided by law", (paragraph 1 hereof). The question also is raised with respect to equipment and supplies other than the type referred to in the foregoing paragraph.

6. It is not the purpose of this memorandum to attempt to cover comprehensively the problems confronting the procurement of equipment, supplies, and services under present circumstances. However, it is the purpose of this memorandum to present problems which reflect the necessity of having principles to direct administrative activity of the type here discussed. The functions of procurement and finance are equally concerned in a clarification of the manner of treatment of the funds involved.

7. Request is made that consideration be given the above in order that the offices concerned may confer in the immediate future to the end that intelligible principles of operation may be developed, thus easing the burden of those charged with administrative details.



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Concurrence

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